

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 05-10508 RGS

JOSEPH GENTLE MOOSE BLAKE
Plaintiff,

v.

ROBERT MURPHY & KATHLEEN DENNEHY,
Defendants.

**ASSENTED MOTION TO STAY DEFENDANTS'
MOTION TO DISMISS, OR, ALTERNATIVELY
MOTION FOR SUMMARY JUDGMENT**

Now comes the plaintiff, Joseph Gentle Moose Blake, and moves the Court for a stay of the defendants' "Motion to Dismiss, or, Alternatively, Motion for Summary Judgment" [hereinafter "Motion"] pending the defendants' amended filing of that Motion. As grounds therefore, the plaintiff states:

- 1) When a defendant presents a rule 12(b)(6) Motion to Dismiss and therein presents matters outside of the pleading which are not excluded by the Court, the motion "**shall** be treated as one for summary judgment and disposed of as provided in Rule 56...." FED.R.CIV.P. 12(b)(emphasis supplied).
- 2) The rules also provide that the Court may allow the parties additional time to draft and file the requisite Rule 56 documents once it has become apparent that the Motion to Dismiss is in essence a Motion for Summary Judgment. FED.R.CIV.P. 12(b).

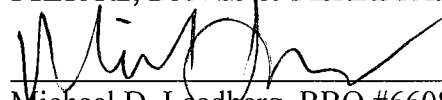
- 3) The defendants' Motion argues facts outside the plaintiff's Second Amended Complaint, and presents and cites to three affidavits and two other exhibits (the latter two consisting of pleadings from a parallel case). Defs.' Mot. To Dismiss, Or, Alternatively, To Grant Summary Judgment, exhibits 1-5. See generally, Defs.' Memo. In Support of Defs.' Mot. To Dismiss, Or, Alternatively, To Grant Summary Judgment.
- 4) Unless the exhibits and all reference thereto are stricken from the defendants' Motion, it must be treated, at least in part, as one for summary judgment.
- 5) The defendants' Motion, as filed, does not include a Concise Statement of Material Facts to be addressed paragraph by paragraph by the plaintiff when Opposing the Motion.
- 6) Counsel for both parties conferred on this matter by telephone on August 3, 2007, at which time both counsel agreed that at least some of the arguments in defendants' Motion are subject to Rule 56 of the Federal Rules of Civil Procedure, and that the defendants' Motion should therefore include a "Concise Statement of Material Facts" pursuant to Local Rule 56.1.
- 7) Compliance with Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1 would prevent undue confusion for the plaintiff when preparing his Opposition, and would significantly clarify, narrow and isolate the issues to be decided for the Court.
- 8) During the August 3, 2007 conference the defendants' counsel agreed to draft and file an amended version of their Motion within thirty days to include a Concise

Statement of Material Facts as provided for in Local Rule 56.1, and to stay plaintiff's time to Oppose pending that amended filing.

- 9) A stay of the plaintiff's Opposition is therefore warranted, pending the defendants' amended filing pursuant to rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1.
- 10) The plaintiff would not need more than 30 days from the date of the amended filing to draft and file its Opposition to defendants' amended Motion.

WHEREFORE, the plaintiff moves to stay the Court's consideration of the "Defendants' Motion to Dismiss, Or, Alternatively, to Grant Summary Judgment" pending the defendants' amended filing. The plaintiff requests 30 days from the date of the amended filing to Oppose the amended Motion.

The Plaintiff,
JOSEPH GENTLE MOOSE BLAKE,
By his attorney,
PIERCE, DAVIS & PERRITANO, LLP

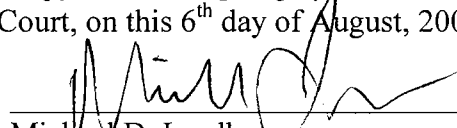


Michael D. Leedberg, BBO #660832
Ten Winthrop Square
Boston, MA 02110
(617) 350-0950

Dated: August 6, 2007

CERTIFICATE OF SERVICE

I, Michael D. Leedberg, attorney for the plaintiff in the above-entitled action, hereby certify that I served upon counsel of record a copy of the foregoing by electronically filing it and all related documents with the U.S. District Court, on this 6th day of August, 2007.



Michael D. Leedberg

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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JOSEPH GENTLE MOOSE BLAKE
Plaintiff,

v.

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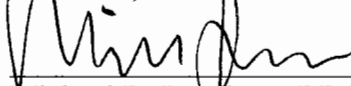
CERTIFICATION OF ASSENT

Counsel for the plaintiff, Joseph Gentle Moose Blake, hereby certifies that, pursuant to Local Rule 7.1(A)(2), I was able to confer with Brian Mansfield, Esq., counsel for the defendants on August 3, 2007. During that conference, Attorney Mansfield assented to the plaintiff's Motion to Stay the Court's consideration of the defendants' Motion to Dismiss/Motion for Summary Judgment pending the defendants drafting and filing of additional documents in support of their Motion, in compliance with Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1. The parties agreed that the defendants would file their addendum within 30 days, and that the plaintiff would have an additional thirty days from the date of the amended filing to Oppose the Motion.

The Plaintiff,

JOSEPH GENTLE MOOSE BLAKE,
By its attorneys,

PIERCE, DAVIS & PERRITANO, LLP



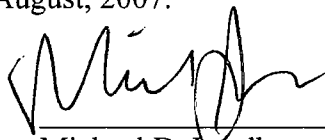
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CERTIFICATE OF SERVICE

I, Michael D. Leedberg, attorney for the plaintiff in the above-entitled action, hereby certify that I served upon counsel of record a copy of the foregoing by electronically filing with the U.S. District Court, on this 6th day of August, 2007.

A handwritten signature in black ink, appearing to read 'Michael D. Leedberg', is written over a horizontal line.

Michael D. Leedberg